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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,577	11/13/2000	John Calce	VIZR.10001NP	7169
10027	7590	02/09/2006	EXAMINER	
ANDERSON, LEVINE & LINTEL L.L.P.			ALPERT, JAMES M	
14785 PRESTON ROAD				
SUITE 650			ART UNIT	
DALLAS, TX 75254			PAPER NUMBER	
			3624	

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/711,577

Applicant(s)

CALCE ET AL.

Examiner

James Alpert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The following communication is in response to Applicant's amendment filed on 11/16/2005.

#### ***Status of Claims***

Claims 4-6,9-10,14-16,19-20,22-23,25 are original. Claims 7,11,17,21,24 are currently amended. Claims 1-3,8,12-13,18,26 are previously presented. There are no new claims, nor are any claims cancelled. Claims 1-26 are, therefore, currently pending.

#### ***Response to Arguments***

**With regard to the rejections made under 35 U.S.C. 101**, Applicant's amendments have overcome the rejections, and they are hereby withdrawn.

**With regard to the rejections made under 35 U.S.C. 112**, Applicant's amendments have overcome the rejections, and they are hereby withdrawn.

**With regard to the rejections made under 35 U.S.C. 102**, Applicant's arguments have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made, as detailed below.

**With regard to the rejections made under 35 U.S.C. 103**, to the extent that the 103 rejection is based on the Gilbert reference, U.S. Patent #6041313, the rejections are withdrawn. However, a new ground(s) of rejection is made, as detailed below.

#### ***New Grounds of Rejection -- 35 USC §103***

The text of 35 U.S.C. §103, which is not included in this action, can be found in a prior Office action. Claims 21-25 are rejected under 35 U.S.C. 103 as being

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unpatentable over Gilbert in view of Henderson et al, U.S. Patent Application Publication #20010014873. Claims 1-9,11-19,26 are rejected under 35 U.S.C. 103 as being unpatentable over Gilbert in view of Meyer et al, U.S. Patent #5933812. Claims 10,20 are rejected as being unpatentable over Gilbert in view of Meyer, and further in view of Henderson.

**With regard to Claim 21**, Gilbert teaches a method comprising:

initiating an account for an employee through a first employer;  
(Col. 8, lines 26-32)

associating said account with said employee and said first employer;  
(Col. 7 lines 36-47)

receiving investment information from said first employer;  
(Col. 5 lines 61-65 ; Col. 6 lines 9-13)

directing the investment of funds provided by said first employer in accordance with said investment information; (Col. 8 lines 56-60)

Although Gilbert discloses the ease with which accounts can be established and removed by an employer, see (Col. 7, lines 36-47), it does not expressly teach:  
associating said account with said employee upon movement to a second employer.

However, Henderson teaches that this feature of applicant's invention at (Page 2, Para. 11) which describes the portability of 401K's among employers. As such, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to combine the teachings of Gilbert, relating to a method for establishing and maintaining individual 401K retirement accounts, with the teachings of Henderson, relating to portability and transferring an account of an employee to a new employer. The motivation for such combination is found in Gilbert at (Col. 3, line 63 – Col. 4, line 2)

which discusses the goal of tracking individualized employee retirement accounts, and continues with discussing a goal of simplifying the administration of 401K accounts.

**With regard to Claim 22**, Gilbert teaches the method wherein:

said account has an identifier uniquely associated with the employee.  
(Col. 8 lines 41-45)

**With regard to Claim 23**, Gilbert teaches the method wherein:

the identifier is a social security number. (Col. 8 lines 41-45)

**With regard to Claim 24**, Gilbert teaches the method comprising:

providing investment accounts for respective employees, each employee having a current employer from a set of employers;  
(Col. 7 line 66 – Col. 8 line 2)

for each employee, receiving investment information from the employee's current employer specifying how withheld funds collected by the employee's current employer should be invested; (Col. 8 lines 56-60)

**With regard to Claims 1,11** Gilbert teaches a system and method comprising:

calculating settlement amounts for employees according to predefined preferences for withholding investment; and (Col. 5, lines 8-16 ; Col. 7, lines 50-57)

generating an investment database of investment amounts associated with the employees; (Col. 9, lines 16-18 ; Col. 7, lines 50-57)

receiving said investment database; and  
(Col. 9, lines 16-18 ; Col. 7, lines 50-57)

coordinating investment of said investment amounts with one or more investment providers. (Figure 6, Process 9 ; Col. 10 lines 55-60))

Gilbert does not expressly teach a system and method that calculates or maintains gratuity income totals. However, there are numerous system and devices that are designed to capture this type of information as they relate to bar and restaurant employees. Meyer, at (Col. 3, lines 50-65) and in detail at (Col. 7 line 37 – Col. 9 line

47) describes one apparatus that allows a restaurant server to electronically maintain earned gratuities.

Thus Meyer teaches:

employer management circuitry for receiving information regarding sales and credit/debit gratuities for each participating employee of an employer;

It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made, to combine the teachings of Gilbert, relating to a system and method for managing employee retirement plans, with the teachings of Meyer, relating to receiving gratuity information. The motivation for such a combination is described in Gilbert at (Col. 2, lines 18-25) which points out that unlimited new employee additions and individual flexibility are desired. As such, it would be natural to tweak Gilbert to include gratuity tracking for restaurant and bar employees. This would increase the number of employees saving for their retirement.

Applicant has argued that Gilbert does not teach the first limitations at the cited passage, however Applicant is reminded that claims may be given the broadest reasonable interpretation. See In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). To that extent, the examiner would point out that the cited passages of Gilbert disclose employee contributions and allocation percentages and amounts. The examiner interprets settlement amounts to include these ideas, that is, how much of earnings should be forwarded toward retirement, and in what investment vehicles. The Applicant appears to treat the term settlement amount to be the totaled purchase amount applied to a credit card user after including a gratuity. Even under this interpretation, the examiner would point out that a combination of the two references

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would teach the method and system as claimed. Gilbert teaches a system and method for considering contribution and allocation of income to 401K's, while Meyer discloses a system and method that is capable of tracking gratuities and the distribution thereof. The examiner is satisfied that a combination of references discloses Applicant's invention as claimed.

**With regard to Claims 2,12,** Gilbert does not teach the system and method comprising:

multiple point of sale devices for receiving the sales, gratuity and investment preference information at respective business locations and generating a location specific investment database; and

a main processor for consolidating said location specific investment databases.

However, Meyer teaches point-of-sale devices that maintain gratuity information at (Col. 3, lines 50-65) and in detail at (Col. 7 line 37 – Col. 9 line 47). These passages describe recording individual gratuities that are then uploaded to a central server. Consolidated information from specific devices is inherent to the system and method of Meyer. Again, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made, to combine the teachings of Gilbert, relating to a system and method for managing employee retirement plans, with the teachings of Meyer, relating to receiving gratuity information at POS device integrated into a network that maintains a totality of information. The motivation for such a combination is that in order to create unlimited new employee additions and individual flexibility as describe in Gilbert at (Col. 2, lines 18-25), it is necessary to maintain the information in a central database at a central location.

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**With regard to Claims 3,13,** Gilbert teaches the system and method comprising:

Receiving said investment database and generating a net investment amount to be credited to the accounts of said employees. (Col. 9, lines 3-5)

**With regard to Claims 4,14,** Gilbert teaches the system and method wherein:

a net investment amount equals a total of investment amounts for all of the employees less a fee for each investment transaction. (Col. 1, lines 33-50)

**With regard to Claims 5,15,** Gilbert teaches the system and method comprising:

communicating said net investment amount to a financial institution associated by the employer for transferring the value of said net investment amount to one or more investment providers. (Col. 6, lines 45-47; Col. 8 lines 50-52)

**With regard to Claims 6,16,** Gilbert teaches the system and method comprising:

transferring information to said one or more investment providers specifying how the money is allocated between the employees. (Col. 8, lines 11-15 ; Col. 9, lines 16-18)

**With regard to Claims 7,17,** Gilbert teaches the system and method comprising:

Receiving money in the value of said net investment amount from said financial institution. (Col. 8 lines 56-60)

**With regard to Claims 8,18,** Gilbert teaches the system and method comprising:

transferring said money to one or more of the investment providers.  
(Col. 8 lines 56-60)

**With regard to Claims 9,19,** Gilbert teaches the system and method comprising:

Transferring information to said one or more investment providers specifying how the money is allocated between the employees. (Col. 8, lines 11-15 ; Col. 9, lines 16-18)

**With regard to Claims 10,20,** Gilbert does not expressly teach the system and method comprising:

identifying each employee by an employer-independent account identifier, such that employees can change from one employer to another employer without changing the account identifier.



However, Gilbert does provide the mechanism for doing so, as described at (Col. 2, lines 18-26 and Col. 8, lines 26-32) which described using SSN's to track employees. Further, Henderson does teach that 401K's are portable and can be tracked from employer to employer. As such, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to combine the teachings of Gilbert, relating to a method for establishing and maintaining individual 401K retirement accounts, with the teachings of Henderson, relating to portability and transferring an account of an employee to a new employer. The motivation for such combination is found in Gilbert at (Col. 3, line 63 – Col. 4, line 2) which discusses the goal of tracking individualized employee retirement accounts, and continues with discussing a goal of simplifying the administration of 401K accounts.

**With regard to Claim 26**, the limitations in this claim comprise the exact same steps as in claim 1 and 10 with one exception, which is that the first limitation measures earned commissions. The Examiner respectfully takes Official Notice that keeping a record of earned commissions by sales personnel is old and well known in the art. As such, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to combine the teachings of Gilbert to specifically include a systems which measures earned commissions by sales personnel. The motivation for such a combination is described in Gilbert at (Col. 2, lines 18-25) which points out that unlimited new employee additions and individual flexibility are desired. It would be natural to tweak Gilbert to include employees working for sales commissions. This would increase the number of employees saving for their retirement.

Applicant has not traversed the examiner's use of Official Notice from the previous office action. MPEP § 2144.03(C) states, in respect to an Examiner's use of Official Notice:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b).

The same section continues:

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

The Examiner is obligated to consider as admitted prior art, the elements of Claims 26.

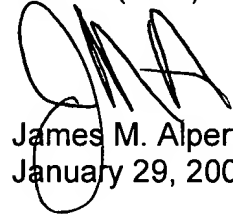
### ***Conclusion***

THIS ACTION IS NON-FINAL. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Alpert whose telephone number is (571) 272-6738. The examiner can normally be reached on M-F 9:30-6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

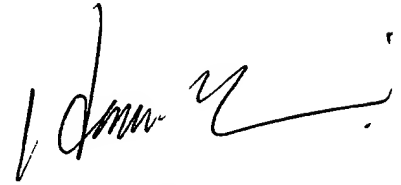
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.



James M. Alpert  
January 29, 2006



HANI M. KAZIMI  
PRIMARY EXAMINER